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6 CITY OF OAKLAND and CESAR GARCIA

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8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**

10  
11 TONY RAY JONES, an individual,

12 Plaintiff,

13 v.

14 CITY OF OAKLAND, a municipality;  
15 CESAR GARCIA, individually and in his  
16 capacity as a police officer for the City of  
Oakland; OFFICER DOES 1 through 10, and  
DOES 11 through 50, inclusive.

17 Defendants.

18

Case No. C12-01416 MEJ

**[PROPOSED] ORDER GRANTING IN  
PART DEFENDANT CITY OF  
OAKLAND AND CESAR GARCIA'S  
MOTION FOR JUDGMENT ON THE  
PLEADINGS; VACATING HEARING**

Date: May 9, 2013

Time: 10:00 a.m.

Courtroom: Courtroom B, 15<sup>th</sup> Floor

19  
20 Defendants City of Oakland and Cesar Garcia ("defendants") moved for judgment on the  
21 pleadings pursuant to Federal Rule of Civil Procedure 12(c) ("Motion") on the third, fourth,  
22 seventh, ninth, and fifteenth causes of action in the Complaint. Defendants were represented by  
23 Supervising Deputy City Attorney William E. Simmons. Plaintiff opposed the motion in part and  
24 was represented by Waukeen McCoy.

25 Having considered the papers submitted, and good cause appearing therefore, it is hereby  
26 ordered that defendants' Motion is GRANTED IN PART as follows:

1 Plaintiff concedes and the City agrees that the third, fourth, ninth, and fifteenth causes of  
 2 action can each be dismissed from the complaint. In his opposition to the Motion, plaintiff  
 3 concedes that he is precluded under *Heck v. Humphrey*, 512 U.S. 477 (1994) from challenging the  
 4 validity of his detention and arrest in the third, fourth, and fifteenth causes of action under 42  
 5 U.S.C. § 1983 (no reasonable suspicion to detain), 42 U.S.C. § 1983 (no probable cause to arrest),  
 6 and for false imprisonment. Plaintiff also concedes that the ninth cause of action for Violation of  
 7 California Civil Code section 52.1 fails to plead sufficient facts as argued in the City's motion.

8 The seventh cause of action for violation of 42 U.S.C. § 1985 remains at issue in the  
 9 Motion. Plaintiff argues that this cause of action sufficiently states a § 1985 claim because he has  
 10 alleged "an ongoing conspiracy within the Oakland Police Department to target and harm young  
 11 African-American males with excessive and unjustified deadly and/or violent force". (Opposition  
 12 at 5:4-6.) Plaintiff also argues that he has sufficiently pled "§ 1983 claims relating to excessive  
 13 force and/or unnecessary deadly force underlying the § 1985 conspiracy claim". (Opposition at  
 14 5:11-13.) Finally, Plaintiff accurately notes that the City does not challenge the legal sufficiency of  
 15 his allegations of racial bias. (Opposition at 5:14.)

16 In light of Plaintiff's clarification of the allegations supporting his § 1985 claim and the  
 17 principles outlined in *Griffin v. Breckenridge*, 403 U.S. 88 (1971) and *Bretz v. Kelman*, 773 F.2d  
 18 1026 (9th Cir. 1985), the City indicates in reply that it does not further challenge the sufficiency of  
 19 the seventh cause of action and withdraws the motion as to this cause of action.

20 Accordingly, based on Plaintiff's concession and the City's withdrawal, the Court dismisses  
 21 the third, fourth, ninth, and fifteenth causes of action from the Complaint. The 5/9/13 hearing is  
 22 VACATED.

23 **IT IS SO ORDERED.**

24 Dated: "71: 14235

25  
 26   
 MAGISTRATE JUDGE MARIA-ELENA JAMES  
 UNITED STATES DISTRICT COURT JUDGE